

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

|                                     |   |                      |
|-------------------------------------|---|----------------------|
| Dale Joseph Burke,                  | ) |                      |
|                                     | ) |                      |
| Plaintiff,                          | ) | <b>ORDER</b>         |
|                                     | ) |                      |
| vs.                                 | ) |                      |
|                                     | ) |                      |
| North Dakota Dept of Correction and | ) |                      |
| Rehabilitation, et. al.,            | ) | Case No. 1:12-cv-131 |
|                                     | ) |                      |
| Defendants.                         | ) |                      |

---

Plaintiff filed an amended complaint with the court on March 28, 2013. Upon reviewing the amended complaint as mandated by 28 U.S.C. 1915A, the court ordered defendants to answer insofar as they are properly served or otherwise waive serve. (Docket No. 24). In so doing, the court was careful to note that, because plaintiff had not sought leave to proceed *in forma pauperis*, he was responsible for serving defendants. (Id.). It further advised that, “[i]f plaintiff encounters difficulties in effectuating service, he may renew his motion for service by the United States Marshal since the court has some discretion to order service in this situation—particularly if defendants do not want plaintiff to have access to their home addresses.” (Id.).

On June 6, 2013, plaintiff filed a “Motion to Order United States Marshall [sic] Service to Serve Defendants at There [sic] Cost.” He complains that defendants have failed to waive formal service of process and answer or otherwise acknowledge receipt of his complaint. He asks the court to order the United States Marshal to serve defendants on his behalf.

Defendants are not required to waive service of process. Nevertheless, given plaintiff’s custodial status and the difficulties he has encountered when attempting to effectuate service of

process, the court, in its discretion, is inclined to assist him. That being said, the court will not assess any costs.

The **GRANTS** plaintiff's motion (Docket No. 26) in part and **ORDERS** that the Clerk's office effectuate service of the summons and complaint upon the Defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure and, if necessary, that the service be made by the United States Marshals Service.

Dated this 19th day of June, 2013.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr., Magistrate Judge  
United States District Court